IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.503 of 2005

Reserved on 14.9.2007

Date of decision 8.10.2007

Shyam Singh Petitioner

Vs.

Union of India and others Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioner: Mr.Sanjeev Sharma, Advocate.

For the respondents: Mr.Anup Rattan, Central Govt. Counsel.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner was enrolled in Indian Army (Rajput Regiment) on 29.12.1990 and was invalidated from the service on 8.5.1992. His disability was assessed at 20% by the duly constituted Medical Board appointed by the competent authority on the basis of which he was allowed disability pension at the rate of Rs.310/- per month. The petitioner was informed by respondent No.3 on 26.2.1999 that since his disability has been assessed at 11% to 14% by the Re-survey Medical Board as such his disability pension was cancelled from 4.1.1999 for five years.

The petitioner filed an appeal against the decision of the authorities before the competent authority, which was not decided. He appeared

[1] Whether reporter of local papers is allowed to see the judgment? Yes.

before the Re-survey Medical Board Military Hospital at Ambala on 1.8.2003 and consequently his disability pension of Rs.310/- was discontinued. He filed a representation on 19.11.2004 before the competent authority for the release of disability pension with effect from 4.1.1999. He was informed by the respondent No.3 on 24.12.2004 that since his disability has been assessed at less than 20% (11%-14%) from 4.1.1999 to 11.10.2003 he was not entitled to disability pension for that period.

Mr.Sanjeev Sharma, learned counsel appearing for the petitioner had strenuously argued that the decision of the authorities to discontinue the disability pension of the petitioner with effect from 4.1.1999 was arbitrary. He further contended that in fact the Re-survey Medical Board had assessed the disability of the petitioner on 4.1.1999 at 20% but it was the PCDA(P) Allahabad which has reduced and assessed the disability at 11-14% for five years in consultation with Medical Advisor (Pension). Mr.Anup Rattan learned Central Government Counsel appearing for the respondents had supported the issuance of letter dated 26.2.1999 (Annexure P-1) and communication dated 24.12.2004 (Annexure P-3).

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

The petitioner was invalidated from the Army on 8.5.1992 on medical grounds. His disability was assessed at 20%. He was granted disability pension with effect from 8.5.1992. He was medically examined by the Re-survey Medical Board on 4.1.1999. His disability as per the record which was produced before this Court at the time of hearing was assessed at 20% by the Resurvey Medical Board. It was reduced from 11-14% by PCDA (P) Allahabad and consequently the petitioner was not held entitled to disability pension with effect from 4.1.1999 to 11.10.2003.

He was medically re-examined by the Resurvey Medical Board, Ambala on 15.10.1998 and consequently his disability was assessed at 20% on the basis of disability and his pension was restored at the rate of Rs.310 /- per month. The competent authority to assess the disability is the Medical Board which comprises of the experts in their respective specialties. The PCDA(P) Allahabad could not reduce the disability from 20% to 11-14% once the same has been assessed by the duly constituted Medical Board. It is evident from the record of Re-survey Medical Board held at Ambala produced by the respondents that the injury was attributable to the military service.

The Delhi High Court in **Ex.LNK Gordhan and etc. v. Union of India and others**, 2002 LAB. I.C. 1941 has held that Chief Controller of Defence Accounts (Pensions) could not reduce the disability pension once the opinion has been given by Resurvey Medical Board that disability had remained unchanged. His Lordship has further held as under:

> "Different Division Benches of Punjab and Haryana High Court have held that the disability indicated by the concerned Medical Board must be accepted by the C.C.D.A.(Pension). This has been so held in Ashwani Kumar (Ex-Havildar) v. Union of India, 1997 (1)Serv. LR 86. The same views have been expressed in Ujagar Singh v. Union of India, 1997 (4) RSJ 587. A Division Bench of this court has also considered the very same question in Raghubir Singh v. Union of India, (1998) 73 Delhi LT 567. My learned Brothers had also relied on the decision of the Hon'ble Supreme Court in Mohinder Singh v. Union of India (Civil Appeal No.164 of 1993 decided on 14.1.1993) and held that the C.C.D.A. (P) had no power to over ride the opinion of the Medica Board which had discharged the petitioner from service with 30% disability. The writ petition was allowed with costs of Rs.2000/-.
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> It may be recalled that a single Jude of this court has already allowed the earlier petition of Shri Ram Kanwar. Single Benches of Punjab and Haryana High Court have held in Darrshan Singh v.

Union of India, 2001 (2) SCT 813; Baldev Singh v. Union of India 2001 (2) SCT 807; Ex. Sepoy Hari Chand v. Union of India, 2001 (2) SCT 524; Ajmer Singh (Ex.Sigmn) v. Union of India, 2001 (1) serv. LR 461; Surmukh Singh v.Union of India, 1994 (4) SCT 31 and Ex. Subedar Clerk Nirmal Singh v. Union of India, 1999 (4) SCT 810, that it was not open to the C.C.D.A.(Pension) or the Appellate Authority to record an opinion contrary to the Resurvey Medical Board, or the Medical Board concerned without re-examination.

Apart from Division Benches of different High Courts, and various pronouncements of Single Judges of different High Courts, the Hon'ble Supreme Court has now given a final and definitive judgment on the question of Ex. Sapper Mohidner Singh v. Union of India (Civil Appeal No.164 of 1993 decided on 14.1.1993), wherein it has observed as follows:

"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher Medical Board before the Chief Controller of defence Accounts (pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line and comment upon the extent of disability without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."

From the above analysis it is at once evident that the matter is no longer res integra. It cannot, therefore, be appreciated that the C.C.D.A. (Pension) continues to implement its own view, which is contrary to these judgments. The effect of this obduracy on the part of the C.C.D.A. (Pension) is that there is proliferation in litigation which is wholly avoidable tests the resources of ex servicemen and

wastes the time of the Courts. It exposes a lack of compassion and concern for human plight especially of persons who have suffered these disabilities while in the service of the armed Forces. An attitude such as has been exemplified by the C.C.D.A. (Pension) is deleterious and demoralizing for persons who have served in the Armed Forces, fully aware of the dangers that are endemic in the performance of their duties. Rather than extending care, there appears to be a concerned effort towards harassment. That too when the amounts in question are not insignificant. "

The Jammu and Kashmir High Court in **Kartaro Devi vs. Union of India**, 2002 LAB. I.C. 2743, has held that the Controller of Defence Accounts cannot sit over the opinion expressed by the Medical Board. His Lordship has held as under:

"The position of law in this regard is well settled that in case an opinion is expressed by the Medical Board, then the Controller of Defence Accounts is not supposed to sit over the judgment and if any decision is to be taken, then that has to be taken after consulting a Medical Board and compliance of natural justice. In Janak Raj v. Union of India (2002) 2 SCT 456 (Punj & Hry), the disability of the aggrieved army personnel was determined by the Medical Board at 40% but the Controller of Defence Accounts rejected the claim. It was observed that the Controller of Defence Accounts can not sit over the findings of the Medical Board as he is not an expert in this regard."

In **Dwarka Nath vs. Union of India,** 2003 LAB. I.C. 1005, the Hon'ble Judge of Jammu and Kashmir High Court held that the pension sanctioning authority could not reject the claim for the pension once disability has been assessed by the Medical Board. His Lordship has held as under:

"In the present case, the disability of the petitioner was assessed at 30 percent. His case was sent to the office of Chief Controller of Defence Accounts, Pension, Allahabad. It is this office which has rejected the claims of the petitioner. Therefore, in view of

> the legal position noticed above, the action of aforesaid office of the Union of India in rejecting the claims of the petitioner for grant of disability pension cannot be sustained. The petitioner is held entitled to disability pension at the percentage which has been assessed by the Medical Board. Let this be calculated and paid to the petitioner. Petitioner shall also be entitled to interest at the rate of 6 percent on the arrears. In case, the disability pension alongwith the arrears is not released within a period of three months from the date, a copy of this order is made available by the petitioner to the respondents, then, the rate of interest, to which the petitioner would become entitled to would be 12 percent and this enhanced component would be payable by the person on whose account the delay occurs.
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> Disposed of as such."

Similarly, the Delhi High Court in **Ex. Hav. Jai Narayan v. Union of India and others**, 2003 LAB. I.C. 3653 held that the reduction of disability by PCDA from 20% to 11 to 14% without subjecting petitioner to a fresh Review Medical Board was impermissible. Their Lordships have held as under:

> "We have gone through those judgments and under these PCDA (P) Allahabad could not reduce or alter the disability percentage determined by the Re-survey Medical Board, unless the petitioner was subjected to a Fresh Review Medical Board on the basis of any superior medical opinion, which is not the case here."

In the present case the stand of the respondents is that though the Resurvey Medical Board had assessed the disability of the petitioner at 20% but it was the PCDA who had reduced it from 20% to 11-14%. The recommendation made by the Medical Board could not be diluted by the PCDA (Pension). Accordingly the decision of the respondents in not releasing the disability pension with effect from 4.1.1999 to 31.7.2003 cannot be sustained.

Consequently the writ petition is allowed. Annexures P1 and P2 are quashed and set aside. The respondents are directed to release the disability pension to the petitioner with effect from 4.1.1999 to 31.7.2003 with interest at the rate of 9% p.a. The respondents are further directed to work out the disability pension within a period of eight weeks from today.

October 8, 2007 (g) **(Rajiv Sharma), J.**